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# RIGHT OF NATIONAL BANKS TO HAVE MORE THAN ONE OFFICE IN CITY OF LOCATION.

THE subject of this paper is one of general interest at this time due to the increased growth of cities and communities, and the establishment of large industrial communities that are social and economic units within themselves, and often within the limits of a municipality.

The question must be determined by the interpretation of the National Banking Act. The interpretation of the Act in this regard has never been directly before the courts, and the only authoritative construction of it is the opinion of the Attorney-General of the United States rendered May 11, 1911.[1] The opinion may be said to be as it were by a divided court, inasmuch as the special Assistant Attorney-General arrived at a different conclusion from the Assistant Attorney-General whose opinion was approved by the Attorney-General.

There is evidently a wide dissent from this opinion today evidenced by the great number of banks throughout the country that are establishing more than one office or banking house.

The right of a bank to have more than one office or banking house in the same city depends upon whether or not the National Banking Act prohibits the establishment of an additional or more offices.

If the National Banking Act does not prohibit the establishment of such an office, whether it can be established under the general powers granted by the Act.

The only provisions found in the Federal Statutes pertinent to

[1] 29 OP. ATT. GEN. 81.

this question are those contained in Sections 5134, and 5190, Revised Statutes.

Section 5134 provides that the certificate of organization shall specify:

> "The place where its operation of discount and deposit are to be carried on, designating the state, territory, or district, and the particular county and city, town or village."

It has been held that "place" in this Section does not mean the office or banking house, but that it refers to the particular "county and city, town or village" in which the bank may have an office or banking house.[2]

"The place where its operations of discount and deposits are to be carried on" means the town or city and not office or building.

Section 5190 provides:

> "The usual business of each national banking association shall be transacted at an office or banking house located in the place specified in its organization certificate."

The right to establish more than one office or banking house depends upon the construction to be put upon this section. It is contended on one hand that Congress by the words "an office or banking house" intended to limit the bank to the establishment of one office or one banking house. On the other hand, it is contended that the indefinite article "a" or "an" does not limit the number of offices to one, but that the indefinite article points out "one of a class containing more of the same kind".

It seems to the writer that the language of this section of the Revised Statutes is not intended to limit the bank to one office or banking house, and that the words used are not words of limitation at all, but are rather a requirement as to how the usual business of each national bank shall be transacted. In other words, the intent of the Act is to require that the usual business of the bank shall be transacted at an office or banking house located in the place specified in its organization certificate, as distinguished from the "curb" or some place other than an office or

[2] McCormick *v.* Market National Bank, 165 U. S. 538, 41 L. Ed. 817, 17 Sup. Ct. 433, 162 Ill. 100, 44 N. E. 381.

banking house, or, to put it differently, that it is the intention that the usual business of each national banking association shall be transacted in some recognized and fixed office or banking house, and shall not be ambulatory, but this prohibition against the business floating around from place to place should not, limit the bank to its transaction in one office or one banking house, rather than in one or more offices or banking houses.

It is also apparent that Congress did not intend to restrict the bank in its selection of the location of the office or banking house where its usual business was to be transacted, or to prevent the change of office or banking house, but permits the business of a bank to be carried on at an office or banking house anywhere in the county and city, town or village designated in its organization certificate. This view is further supported by the fact that the law specifies that a national banking association may change its name or place to any other place within the state not more than thirty miles distant with the approval of the Comptroller of the Currency.

While it seems that independent of any rule of construction, this provision is a requirement that at least one office or banking house be established, the United States Revised Statutes, Section 1, says that in determining the meaning of the revised statutes, "words importing the singular number may extend and be applied to several persons or things", so it is held that the indefinite article "a" or "an" is not usually a word of limitation and does not necessarily mean "one", but that it may be one of a class containing more of the same kind.[3]

Mr. Chief Justice Fuller, in holding that a grant in aid of "a railroad" may extend to a main road and branch subject to the adjustment applicable to two roads, lays down the rule for the construction of statutes, saying:

> "And the general rule is that 'words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular', as provided in U. S., Rev. Stat. 1."

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[3] United States *v.* Oregon & California R. Co., 164 U. S. 526, 41 L. Ed. 541, 17 Sup. Ct. 261.

Bouvier's Law Dictionary says:

"The article 'a' is not necessarily a singular term, it is often used in the sense of 'any', and is then applied to more than one individual object; 141 Mass. 266; 101 N. Y. 453; 60 Ia. 225; sometimes as *the;* 23 Ch. Div. 595."

The construction of the meaning of "a" has not often been before the courts, but the decisions found sustain this view.

"Now the adjective 'a' commonly called the 'indefinite article', and so called, too, because it *does not define any particular person or thing,* is entirely too indefinite, in the connection used, to define *or limit the number of* judges which the legislative wisdom may provide for the judicial circuits of the State. And it is perfectly obvious that its office and meaning were well understood by the framers of our constitution; for nowhere in that instrument do we find it used as a *numerical limitation.* * * * According to Mr. Webster 'a' means one *or* any but less 'emphatically than either'. It may mean one where only one is intended, or it may be any one of a great number. That is the trouble. *Of itself it is in no sense a word of* limitation. * * * The constitution requires 'a judge' for each circuit, and there must be *at least one judge.* But where is the limitation upon the legislature to provide for more if the necessity arises."[4]

In *National Union Bank* v. *Copeland,*[5] the court said:

"But the particle 'a' is not necessarily a singular term. It is often used in the sense of 'any' and is then applied to more than one individual object."

If the location of an office or banking house were exclusive and were to have the physical effect of preventing the establishment of another office or banking house, or, if the location of an office or banking house for the transaction of the usual business of a bank would prevent the establishment of another office or banking house, because such business could not be split up and it would be impossible to carry on a part of it elsewhere, then the construction that the words "an office or banking house" mean "one" office or banking house might be tenable.

The Act provides and contemplates that the usual business of

[4] State, *ex rel. v.* Martin, 60 Ark. 343, 30 S. W. 421, 28 L. R. A. 153.
[5] 141 Mass. 257, 266, 4 N. E. 794.

the bank can be carried on anywhere within the county and city, town or village, the place of its location, and the usual business referred to is embraced in the provisions of Section 5136, which provides in part:

> "Upon duly making and filing articles of association and an organization certificate the association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—
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> "*Sixth*: To prescribe, by its board of directors, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its general business conducted and the privileges granted to it by law exercised and enjoyed.
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> "*Seventh*: To exercise, by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this Title.
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> "But no association shall transact any business except such as is incidental and necessarily preliminary to its organization, until it has been authorized by the Comptroller of the Currency to commence the business of banking."

There is nothing in this Section which provides for the place of business, nor for the purchase of real estate.

Section 5137 provides:

> "A national banking association may purchase, hold, and convey real estate for the following purposes, and for no others:
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> "*First*: Such as shall be necessary for its immediate accommodation in the transaction of business."

This Section is intended as a limitation on the holdings of real estate by the bank, but it does not, in turn, provide that the bank may only purchase one piece of real estate or one office building, and independent of this Section, the power to rent offices or ac-

quire real estate necessary for the offices would be within the implied powers of the bank.

As pointed out, the bank may have its office anywhere within the "place" designated but it may not go beyond such "place", and the "usual business" may be transacted at such office located anywhere within the "place" designated. The "usual business" is the business described above and it has been established (or held) by the courts that some of such business may be transacted outside of the main office of the bank, and that its officers can transact such business at other places than the main office. In short, it is held that certain transactions may even take place beyond the limits of the county and city, town or village, mentioned in the certificate, nevertheless, an office or banking house, could not be established beyond the limits of such city or town.

It is a fair conclusion therefore that a national bank may transact its usual business in more than one office within the place of its location and this notwithstanding the consideration and deference to be accorded the opinion of the Attorney-General of the United States of May 11, 1911, referred to above, on the subject of permitting the Lowry National Bank of Georgia, to establish a branch bank.

The result in that opinion seems to have been reached more from the viewpoint of dealing with a branch bank doing a business of equal dignity and co-ordinate to the main bank than upon the question of the permissibility of establishing more than one office or banking house in the place of its location, under the control of one board of directors and one set of officers. A branch bank could very properly have a business all its own and could do all of the things permitted to a general bank.

In *Norfolk & Western Ry. Co.* v. *Lynchburg Cotton Mills Co.*,[6] the court said:

> "In *Akers* v. *Canal Company*, 43 N. J. L., 110, 112, the court has formulated the following definition of 'a branch road', in which we entirely concur: 'A branch road, as applied to railroads, denotes a road connected indeed with the main line, but not a mere incident of it, or constructed simply to facilitate the business of the chief railway, but designed to have a business of its own, for the transportation of per-

[6] 106 Va. 376, 380, 56 S. E. 146.

sons and property to and from places not reached by the principal road.' "

It can be seen that the same definition would apply to a "branch bank". But if we take the usual "business" of the bank as covering the whole city, then the fact that its transaction, from convenience or necessity, is done in several offices presents a different question from a branch bank.

We can understand that it might be a mistake for a bank to establish "branches", with entirely distinct businesses, in other places, or even in the same city, because of the very strong reason urged in that opinion, but we can see no sound reason why there should be but one office of a bank in any given city. A sub-office would require no division of the capital stock and need require no more of a division of the officers or of the business of the bank, or its working force, than is required by the savings department, the trust department or the general banking department of a national bank operated in the same building. The great multiplicity of vice-presidents and cashiers by national banks in recent years makes the opening of other offices a simple matter.

The question involved is not whether a bank can carry on its general business anywhere within the place of its location, for we understand that it has always been conceded that a national bank may locate its office or banking house anywhere within the county and city, town or village designated in its charter, which is referred to as the "place of location", and may move its office or banking house in its discretion from place to place.

Section 5190, by its terms, would prevent a national bank from establishing its office outside the place of its location, and so the bank may not locate any office outside of the place of its location for the transaction of its usual business, but it is thought that the decision in the case of *Bank of Augusta* v. *Earle*[7] is authority for the proposition that a bank may transact a particular kind of business through an agency elsewhere than at the place of its location, and in that case it is held that a bank which was chartered under the laws of the State of Georgia, and had its principal office in Augusta, Georgia, but an agency in Mobile,

[7] 13 Peters 519, 10 L. Ed. 307.

Alabama, for the purpose of trafficking in exchange, had the power to make contracts outside the State which had granted its charter. The court said on page 589:

> "The corporation must, no doubt show that the law of its creation gave it authority to make such contracts, through such agents. Yet, as in the case of a natural person, it is not necessary that it should actually exist in the sovereignty in which the contract is made. It is sufficient that its existence as an artificial person, in a State of its creation, is acknowledged and recognized by the law of the nation, where the dealing takes place; and that it is permitted, by the laws of that place to exercise there the powers with which it is endowed."

Because of Section 5136, which limits the offices of a bank to the place of its location, the decision in *Bank of Augusta* v. *Earle*,[8] cannot be applied so as to construe this section to permit a branch bank or the location of an office for the usual business of a national bank in another place than that of its location, but it seems to follow directly from that opinion that since a national bank has the right to do a general banking business anywhere within the city of its location, and has the right to establish its office anywhere within the city, that it may establish as many such offices as are needful, suitable or proper, or such as are required to meet the legitimate demands of the usual business.

Of course, this construction of Section 5190 is preliminary to this conclusion, for it could not be so held if Section 5190 limits a national bank to one office, for whatever one's view might be as to the powers incident to the general business of a national bank, it could not be said that a bank could have more than one office if Section 5190 must be interpreted as saying "one" office or banking house. But if the above view is correct as to the meaning of Section 5190 the rest offers little difficulty under the decisions of the United States courts.

*First National Bank* v. *National Exchange Bank*,[9] construing Section 5136, says:

> "Authority is thus given to transact such a banking business as is specified, and all incidental powers necessary to carry it on are granted. These powers are such as are required

[8] Note 7, *supra*.

[9] 92 U. S. 122, 127, 23 L. Ed. 679.

> to meet all the legitimate demands of the authorized business, and to enable a bank to conduct its affairs, within the general scope of its charter, safely and prudently."

The opinion of the Attorney-General declares that no case or text writer has approved the principle that a bank has the power of establishing a branch for carrying on a general banking business, unless such power is granted either by its charter or by the general statute in express language, or by necessary implication.

While this may be true as to *branch* banks, the Attorney-General recognizes that *Bank of Augusta* v. *Earle*,[10] and *Bank of Columbus* v. *Beach*,[11] and other cases cited, in the opinion, are conclusive of the proposition that a bank may maintain an agency, the power of which is restricted to dealing in bills of exchange, or possibly to some other particular class of business incident to the banking business, but asks the question whether they are authority for the proposition that a bank may establish a branch for the transaction of a general banking business, and the opinion further on declares that the courts recognize a vital distinction between a mere agency for the transaction of a particular business and a branch bank, wherein is carried on a general banking business. But if power is implied to have an agency, then this is power to have an office for such agency, and if it is an office located in the place named in the charter, then the usual business of the bank may be carried on there.

This concedes the right of the bank to establish other agencies, and if the bank has the right to establish other agencies, the question is, how can such agencies be limited to dealing in bills of exchange, or possibly some other particular class of business incident to the banking business and not agencies for the receipt of deposits, discounting notes and paying checks, or other business permitted under sub-section 7 of Section 5136, provided that if such business amounts to the "usual business" it shall only be transacted at offices or banking houses within the city or town of its location.

It must be noted that the opinion of the Attorney-General depends in large part upon the distinction between a branch

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[10] Note 7, *supra*.

[11] 5 Fed. Cas. 739.

bank and an agency, and the doctrine of the text books cited seems to be based on the same theory.

It is proper in this paper to consider some of the features of the opinion of the Attorney-General, which seem not to support the conclusion reached in the opinion.

For example the opinion refers to Section 5138, Revised Statutes, which provides that the minimum capital stock of a bank in the places having over fifty thousand inhabitants should not be less than $200,000, but this section has no bearing on the question if we do not treat the additional office as a branch office and there is no allocation of capital to such office.

This section might be important if, instead of an office, a branch bank were established. For example, the question of the division of capital might be important in a branch bank of coordinate powers with the main bank, but not with an office in which the deposits and discounts are a part of the liabilities and assets of the main bank and where the management of the office is a part of the management of the whole.

Again, there is nothing in the Act requiring the Comptroller to withhold the certificate until an office is selected. On the contrary, a bank cannot lease or purchase an office until authorized to do business. So, if the Comptroller has no control over the principal office, why should he have control over a second office?

On page 95 of the opinion of the Attorney-General the question is asked:

> "Can it be supposed that if Congress intended to authorize the establishment of branches by national banks no restraint whatever would have been thrown around the exercise of such power, and that the Comptroller, who in all other respects is given such ample power of control over the existence and conduct of banks, would not have been vested with some power of control over the location of such branches and the manner in which the same should be established and conducted?"

It does not seem that the Comptroller's control over the existence and conduct of such banks would be affected in any way by the establishment of more than one office, but that under his general powers the Comptroller would fully control the business and management of the office of the bank.

While this control would not have to do directly with the location of the additional offices any more than it does at present with the main office, nevertheless, the general control of the usual business of the bank would be as effective if conducted in several offices as in one office. It is certain that the Comptroller's powers would prevent the establishment of offices in such number and to such extent as would jeopardize the safety of the institution. It is difficult to see how the establishment of offices would be fraught with more serious danger and would result in an inflation of the banking business upon insufficient capital and would in any degree lessen the adequate supervision and control of the bank's business by the chief officers in authority.

The Attorney-General's opinion is also influenced by the Act of Congress, Section 5155, Revised Statutes, which permits a State bank, organized under State laws, having branches to become a national banking association and to retain and keep in operation its branches, and it is argued that there was no need of this statute if national banks could have branches. Clearly this argument loses its force when it is noted that State banks may have branches all over the State, a very different situation from a national banking association having several offices in the same city.

The opinion of the Attorney-General, page 97, says:

> "If the power existed for a national bank to have branches, there was no necessity for the express provision allowing State banks, were converted, to retain their branches."

When it is reflected that the national banking law restricts a national bank to the county and city, town or village, the place of its location named in its certificate, then it is seen that this statute becomes quite necessary.

What reasons of public policy or economic expediency could have influenced Congress to allow an additional office in the same city when the result of taking over a State bank, and to refuse it when the result of expansion? The intention of Congress as disclosed by the language used is the governing factor, but we could not impute to that body such an illogical and un-

reasonable intent as to allow it in one case and refuse it in another.

On page 97, the Attorney-General says:

> "By act of May 12, 1882 (27 Stat. 33), any national bank in Chicago designated by the World's Columbian Exposition was, upon approval by the Comptroller, authorized to conduct a banking office upon the exposition grounds, the time within which such branch might be operated being restricted to two years; and a similar act was passed March 3, 1901 (31 Stat. 1444), with reference to the establishment by the banks of St. Louis of branches on the grounds of the Louisiana Purchase Exposition."

It is true that the statute referred to provides that any national bank located in the city of Chicago and State of Illinois may be designated by the World's Columbian Exposition to conduct a banking office upon the exposition grounds and upon such determination being approved by the Comptroller of the Currency, the bank should be authorized to open and conduct such office as *a branch* of the bank, nevertheless, we are unable to follow the argument of the Attorney-General because it might well have been that by reason of the control by Congress of the World's Columbian Exposition through a commission created by a statute which gave the commission certain powers, but not the power to establish a bank on its grounds, that it became necessary such a power should be specifically granted by Congress, and, therefore, the Act may have had its origin in this case.

As to the question of the Louisiana Purchase Exposition, the Act of Congress of March 3, 1901, provided that any bank or trust company located in the city of St. Louis or *State of Missouri,* could be designated by the Louisiana Purchase Exposition to conduct a banking office on its grounds, so that this particular act was necessary because it extended the powers to any bank within the State of Missouri. It does not appear whether the Louisiana Purhase Exposition was actually in the city of St. Louis or not, but the opinion falls into error in stating that the Act was passed in reference to the establishment by the banks of St. Louis only.

Under Section 5136, sub-section 6. Revised Statutes, quoted above, it is declared that upon filing the organization certificate

the association shall become a body corporate and shall have power,

> "To prescribe, by its board of directors, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, *its general business conducted, and the privileges granted to it by law exercised and enjoyed.*"

Since this section gives the Board of Directors the right to determine how the general business of the bank shall be conducted, accepting the construction that Section 5190 is not a limitation of the number of offices that may be established by a bank it follows that the Board of Directors of a bank has vested in it under this Section the power of determining at what offices or banking houses the business of the bank shall be conducted and the number of such offices.

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